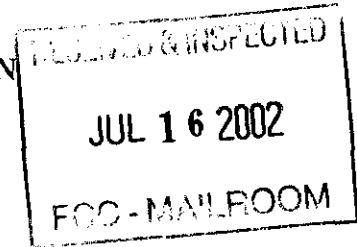


Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554



In the matter of)

)
 Appropriate Regulatory Treatment for)
 Broadband Access to the Internet Over)
 Cable Facilities)

CS Docket No. 02-52

REPLY COMMENTS OF THE CITY OF WESTON, FLORIDA

These comments are filed by the City of Weston, Florida in reply to and in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Weston believes that local governments: (a) should be able to require cable operators to obtain additional authorizations to use and occupy public rights-of-way to provide cable modem services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights-of-way to provide cable modem services; and (c) should be able to regulate cable companies' provision of cable modem services and use of the rights-of-way. In the City's experience, as explained more fully below, cable operators will generally only offer cable modem service when mandated to upgrade their cable systems pursuant to franchise agreements, and local governments must maintain regulatory authority to protect consumers and other users of the rights-of-way.

1. Our Community and the Status of Cable Modem Service.

Weston is a city of approximately 54,000 residents served by both AT&T Broadband and Advanced Cable Communications. Advanced Cable Communications ("Advanced") has 15,627 subscribers and AT&T Broadband ("AT&T") has 4,074 subscribers. Even though the two

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companies have city-wide franchises, they have not overbuilt each other and they do not compete. Advanced's cable system serving subscribers has upgraded its plant to 860 MHz, and offers 200 total channels consisting of 71 basic analog channels, 41 digital premiums, 45 music channels, 24 digital pay per view channels, 2 adult services and 17 Hispanic channels on digital (9 video and 8 music). Advanced offers 2-way high-speed cable modem Internet access.

AT&T actually operates two different cable systems in the City, one acquired from MediaOne and the other acquired from Comcast. AT&T's system acquired from MediaOne has upgraded its plant to 750 MHz, and offers 217 total channels consisting of 67 analog channels, 43 digital premiums, 45 music channels, 39 digital pay per view channels, 4 adult services and 17 Hispanic channels on digital (8 video and 9 music). AT&T offers 2-way high-speed cable modem service on this system. AT&T's system acquired from Comcast has upgraded its plant to 750 MHz and offers 136 total channels consisting of 72 analogue channels, 43 digital premium, 1 digital pay-per-view, 4 digital adult, 16 digital Hispanic, and digital music channels. **AT&T does not offer cable modem service on this system.** Customers served by this system have complained to the City and to AT&T that they could not obtain the same services as residents served by AT&T's other cable system.

2. City's Franchises And Cable Modem Service.

Both the Advanced franchise and the AT&T franchise acquired from MediaOne were issued in 1998. Neither franchise specifically required the companies to offer cable modem Internet service (which was not widely available in 1998), but both franchises required upgrades to a minimum 750 MHz, and fully activated 2-way cable systems within a certain timeframe. As a result of these mandated upgrades pursuant to the franchise renewals, both AT&T and Advanced offer true 2-way digital services, as well as cable modem service. In addition, under

the definition of “gross revenue” contained in the City’s Cable Ordinance, both companies paid franchise fees on cable modem service until Florida preempted such fees with the adoption of a State-administered communications services tax, as described further below.

The franchise AT&T acquired from Comcast expires in 2002. As part of the City’s recent negotiations in connection with the renewal of this franchise and AT&T’s request for the City’s approval for the transfer of control of this franchise to AT&T Comcast, AT&T committed to offering the same cable services on this system as it offers on its other cable system. **Because of the Federal Communications Commission March 15, 2002, Order, AT&T refused to commit to offering cable modem service on this system.** At this point, the City does not know whether AT&T will offer such service.

BellSouth is the incumbent local telephone service provider in the City. Because of technical reasons, BellSouth does not offer Direct Subscriber Line (“DSL”) high speed Internet access in Weston even though it offers this service in other areas of the county. The City has urged BellSouth to offer this service, but BellSouth would not commit as to when DSL service will be made available, if at all, in the City. There are no other providers of residential high speed Internet access in the City, and thus, no competition for residential high-speed Internet access to AT&T’s and Advanced’s cable modem service.

3. Franchise Fees and Taxes on Cable Modem Services.

On October 1, 2001, Florida implemented the Communications Services Tax Simplification Law, which provides for payment of a communications services tax to Florida’s Department of Revenue, which is then distributed to local governments, in lieu of franchise fees. The communications services tax was designed to be “revenue neutral” by including taxes on revenues from some services while eliminating taxes on revenues from other services, including

cable modem services. Accordingly, the percentage tax rate on cable services paid by cable customers under the communications services tax is greater than the 5% franchise fee previously paid by cable customers, but cable modem customers do not pay communications services taxes on the service. Customers of cable services subsidize the cost of use of rights-of-way for cable modem service. The City's tax rate for communications taxes was established to provide the City with the same revenue it received prior to implementation of the new tax from applicable taxes and franchise fees, including franchise fees on cable modem service. Accordingly, while other local governments throughout the Country will see a revenue decrease as a result of the Federal Communications Commission's Order, Florida local governments should not be affected. The Federal Communications Commission's Order is significant however, if Florida repeals or modifies the communications services tax to include revenue on cable modem service.

While franchise fees on cable modem service were eliminated effective October 1, 2001, AT&T still has not made the service available on the system it acquired from Comcast, even though there is sufficient bandwidth on the 750 MHz cable plant to accommodate the service. On the other hand, charging franchise fees on cable modem service did not deter Advanced and AT&T from offering the service on their upgraded systems pursuant to the requirements of their franchises. In fact, both Advanced and AT&T offered cable modem service as soon as they completed construction of a node capable of providing the service. In the City's experience, there was no correlation between offering cable modem service and whether the service was subject to franchise fees or not.

4. The City's Regulation of Cable Modem Service.

In 1998, the City adopted a Cable Ordinance containing customer service provisions applicable to all cable franchisees, Title XI, Chapter 114 of the City Code. In response to

specific customer complaints, the City amended its customer service provisions in November 2001, to include specifically that several of the customer service provisions would apply to cable modem service. For example, if a franchisee's service technician is late or misses an appointment, the Cable Ordinance entitles the customer to a credit, regardless of whether the appointment was to address a video or cable modem problem or both. Similarly, under the City's Cable Ordinance, customers who do not have service for at least three hours under normal operating conditions are entitled to a credit upon request regardless of whether the outage affected their video or cable modem service, or both.

In addition, the City's Cable Ordinance requires cable franchisees to provide the City's address and phone number on their bills and to notify customers that they can contact the City with complaints. Both AT&T and Advanced include cable modem service and video service on one bill. They do not notify customers that they should not contact the City with respect to cable modem complaints. It would be very confusing for customers to attempt to create a distinction that they may contact the City for cable service, but not for cable modem service issues. In reality, City residents will continue to contact the City with respect to all issues involving the cable companies. In fact, the City recently responded to a customer who complained about Advanced's cable modem service that the City had no authority over Advanced's technical service, but the City could require that Advanced provide a credit and urged Advanced to contact the customer to resolve the issue. AT&T recently took the position that because of the Federal Communications Commission's Order that cable modem service is not a cable service, the Cable Ordinance's requirement for 30-day notice to customers and the City about rate changes does not apply. See attached letter from Susan Bisno of AT&T Broadband.

The City regularly receives complaints from customers regarding the services provided by franchised cable operators. These include complaints about traditional video programming services and about cable modem services. Responding to these complaints requires significant staff time and effort. The bills distributed by the cable franchisees do not include contact information for the Federal Communications Commission. If the Federal Communications Commission were to assume the responsibility for addressing customer issues with respect to cable modem service, there would need to be significant education and notification to customers, as well substantial staff and resources available to respond to such complaints. There is a substantial and continuing need to protect consumers of cable modem service, just as there is with respect to traditional cable video services. The Federal Communications Commission should maintain local government regulatory authority over consumer protection issues associated with cable modem service.

5. The City's Regulation Of The Rights-of-Way.

The City's Cable Ordinance contains the regulations applicable to a cable franchisee's use of the public rights-of-way. The franchise agreements require compliance with the Cable Ordinance and may contain specific additional construction requirements that apply to a specific franchisee. If a franchise is not required to use the City's rights-of-way for cable modem service, the City may lose important aspects of its ability to regulate construction within its rights-of-way and to require restoration of property, insurance and indemnification.

By way of example, pursuant to the City's Cable Ordinance and the franchise issued to Advanced, Advanced must maintain its wires, cables, fixtures and other equipment in a safe condition in the public rights-of-ways within the City. Advanced failed to maintain its underground vaults in a safe manner, thereby creating a hazard for City residents. Enclosed

please find recent photographs illustrating the manner in which Advanced maintained its underground facilities in the City. The City placed Advanced on notice of violation and demanded that it correct the violation. Subsequently, Advanced repaired its vaults within our City. There are instances where Advanced may be using the rights-of-way to place facilities solely for the provision of cable modem service, and not cable video services. There are a number of residents in the City who do not subscribe to cable video services, but subscribe solely to cable modem service. The City does not know whether the facilities occupying Advanced's underground vaults are used by Advanced to provide cable video service, cable modem service, or both. Nor should this be a distinction for the City.

The City has an interest in protecting the safety of its residents and traveling public and in protecting other users of the rights-of-way. If the City loses the ability to regulate the rights-of-way with respect to cable modem service, the City will not be able to protect the traveling public and other users of the rights-of-way. Moreover, without a franchise agreement or other authorization to use the rights-of-way, the City's ability to obtain insurance certificates naming the City as an additional insured and to require indemnification in the event of injury or property damage may be compromised. The Federal Communications Commission should not diminish the City's ability to regulate use of the rights-of-way with respect to providers of cable modem service.

6. Broadband Deployment In the City.

Weston believes it is very important to encourage broadband deployment. Pursuant to franchise requirements, Advanced and AT&T (under its 1998 franchise), provide schools within their service areas with one free connection to their on-line cable modem service. We have already seen the negative impact of the Federal Communications Commission's Order on

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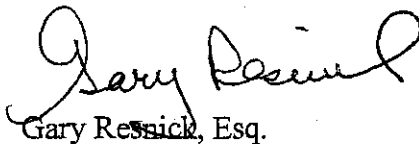
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availability of broadband in our community. Because of the Federal Communications Commission's Order, AT&T would not commit to deploying cable modem service on the system it acquired from Comcast as part of franchise negotiations, or to make the service available in schools served by that cable system. Thus, the Federal Communications Commission's Order has created "haves" and "have nots" in our City. If the Commission determines ultimately that local governments should not have the ability to negotiate for the provision of cable modem service to realize the educational benefits of broadband services, the Commission should impose and enforce federal mandates regarding the provision of cable modem service.

Conclusion

In Weston's experience, the cable operators offered cable modem service only in response to the City's franchise mandates to upgrade their cable systems to offer 2-way activated services. In addition, to protect consumers and other users of the rights-of-way, local governments must maintain the ability to regulate cable modem service. Accordingly, Weston urges the Federal Communications Commission to maintain the requirement that providers of cable modem service obtain a franchise or other appropriate authorization to utilize a local government's rights-of-way.

Respectfully submitted,



Gary Resnick, Esq.

Weiss Serota Helfman Pastoriza & Guedes, P.A.
City Attorneys for the City of Weston
2500 Weston Road, Suite 101
Weston, FL 33331
(954) 385-2000

July 9, 2002

CERTIFICATE OF SERVICE

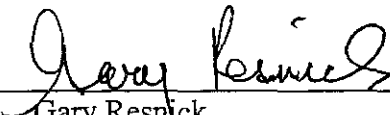
WE HEREBY CERTIFY that a true and correct copy of the foregoing has been
furnished by mail this 12th day of July, 2002, to

Qualex International
Portals II
445 12th Street S.W.
Room CY-B402
Washington, D.C., 20554
(2 copies)

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Cable Service Bureau
445 12th Street, S.W., 3C488
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(2 copies)

Linda Senecal
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By: 
Gary Resnick
Fla. Bar No.: 54119

RECEIVED
CITY OF WESTON
2002 MAY 31 AM 10:30



Florida Market

AT&T Broadband
600 N. Pine Island Road, Suite 100
Plantation, Florida 33324

May 30, 2002

The Honorable Eric M. Hersh
Mayor - City of Weston
2500 Weston Road, Suite 101
Weston, FL 33331

Dear Mayor Hersh:

I am writing to inform you that on or after July 1, 2002, AT&T Broadband will implement a change in the monthly service rate for some AT&T Broadband Internet Service ("ATTBI") customers in your former MediaOne service area. AT&T Broadband is reallocating the price of our Internet Service offering between the service itself and the lease of the modem. For over 95% of our customers in Florida, there will be no change in their overall monthly rate. A copy of the draft notice to customers detailing the changes is attached for your reference.

As you may know, on March 15, 2002, the Federal Communications Commission decided that cable modem service is an interstate information service, not a cable television service. Therefore, the 30-day prior notification to local franchising authorities is no longer required. However, as a courtesy, AT&T Broadband is providing you this notice.

If you have any questions, please do not hesitate to contact me at (954) 533-5102.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan", with the initials "TCB" written below it.

Susan Bisno
Vice President
Local Government Affairs

Attachment

Cc: John Flint, City Manager

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May 3, 2002

VIA CERTIFIED MAIL

Jim Pagano
Vice President and General Manager
Advanced Cable Communications
12409 NW 35th Street
Coral Springs, FL 33065

RE: City of Weston
Notice of Franchise Violation and Demand for Compliance

Dear Mr. Pagano:

This letter shall serve as notice to Advanced Cable Communications ("Advanced") that, pursuant to Section 34 of the City of Weston Cable Television Franchise Agreement ("Agreement") granted by the City of Weston, Florida ("City") pursuant to Ordinance No. 98-29, the City hereby notifies Advanced that it is in violation of the terms and conditions of the above referenced Agreement and the City's Cable Television Ordinance. In accordance with Section 34 of the Agreement and the City of Weston Ordinance No. 98-10, as amended by Ordinance No. 2001-30, codified as Title XI, Chapter 114 of the City Code ("Cable Television Ordinance"), Advanced shall have thirty (30) days from the date of receipt of this letter to cure or commence to cure the violation.

NOTICE OF VIOLATION

Franchise Agreement, Section 11.

Advanced has violated the Agreement by failing to maintain the City's Rights-of-Way as required in the Cable Television Ordinance. Specifically, pursuant to Section 11(A) of the Agreement, Advanced agreed at all times to comply with and abide by all applicable provisions of

Mr. Jim Pagano, Vice President and General Manager
May 3, 2002
Page 2

the Cable Television Ordinance. Section 21(H) of the Cable Television Ordinance codified at §114.46(H) of the City Code, states that the Franchisee shall, at all times:

(1) Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the City's Building Code and Electrical Safety Ordinances and any other applicable Building or Electrical Safety Code, and in such manner that they will not interfere with any installations of the City.

(2) Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located.

As of this date, Advanced has failed to maintain the underground structures that house its cable wires in a safe manner in numerous locations within the City. Enclosed as Exhibit "A" are recent photographs illustrating the manner in which Advanced is maintaining its facilities in the City's Rights-of-Way; Location #1) Corner of Quail Roost Dr. and Hunters Point Blvd., Weston Hills Country Club; and #2) the South side of Arvida Parkway, at the corner of Weston Hills Drive. These are only two of the numerous sites noted by the City where Advanced has not properly maintained the City's Rights-of-Way. Advanced is therefore not in compliance with the Agreement.

The condition of Advanced's facilities in the City's Rights-of-Way demonstrates that Advanced is not meeting the standards of applicable building and/or electrical safety codes. Moreover, the condition of Advanced's facilities is creating a safety hazard for Weston's residents.

DEMAND FOR COMPLIANCE AND ENFORCEMENT.

Pursuant Section 34 of the Agreement, demand is hereby made that Advanced correct the above referenced violation in a safe and suitable manner. To correct the violation, the City demands that Advanced conduct a complete inspection of all its underground vaults in the City. Advanced must provide the City with its plan for carrying out such an inspection, and afford the City the opportunity to participate in the inspection. After the inspection, Advanced must provide the City with a list of locations of all such underground vaults, and a list of vaults needing repair or replacement. Advanced must then provide the City with a plan, satisfactory to the City, for repairing or replacing all unsafe underground vaults as quickly as possible.

Mr. Jim Pagano, Vice President and General Manager
May 3, 2002
Page 3

If Advanced has not commenced the cure of the above referenced violation within thirty (30) days, unless the City Manager has granted an extension of time, the City, in accordance with Section 34 of the Agreement, will begin to assess fines in the amount of \$500 per day or part thereof with each day of a continuing violation constituting a separate violation, for Advanced's continued non-compliance. In addition, the amount of damages shall include, but are not limited to, any enforcement remedies as specified in the Cable Television Ordinance.

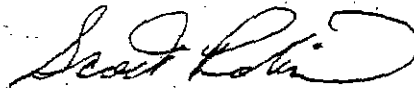
In addition, if Advanced does not take appropriate steps to inspect and to correct safety violations with its underground facilities, the City reserves the right to do so and to charge Advanced for fees and costs. The City may invoke any further remedies available pursuant to applicable law if it determines such action is warranted. Payment of damages by Advanced shall not relieve Advanced of its obligation to comply with the Agreement.

NO WAIVER

Notice of the above referenced violations does not constitute a waiver of any other rights or remedies with respect to enforcement of any terms and conditions of the Agreement, or any other agreements or obligations to which Advanced may be subject. Further, this Notice of Violation is not intended to be all inclusive with respect to Advanced's compliance with all terms and conditions of the Agreement. Accordingly, the City reserves the right to proceed with any other available rights and remedies and to enforce all terms and conditions of the Agreement, whether or not such terms and conditions are the subject of this notice.

Please provide the required plan to cure these violations within thirty (30) days of this notice with respect to the issues discussed above. If you have any questions or would like to discuss this matter, please do not hesitate to contact us.

Very truly yours,



Scott A. Robin

SAR:zw
470.017

Enclosure

cc: John Flint, City Manager, City of Weston
Jamie Alan Cole, Esq., City Attorney, City of Weston
Gary Resnick, Esq., Office of the City Attorney

